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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,416	07/10/2003	David Schlereth	10884	3034

7590 09/08/2004  
Richard W. Goldstein  
2071 Clove Road  
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EXAMINER

CRANE, DANIEL C

ART UNIT PAPER NUMBER

3725

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/617,416	<b>Applicant(s)</b> SCHLERETH, DAVID	
	<b>Examiner</b> Daniel C Crane	<b>Art Unit</b> 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/10/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **BASIS FOR REJECTIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

## **REJECTION OF CLAIMS ON FORMAL MATTERS**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1- 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (1) As to claim 1, and in the embodiment where one receptacle extends into the crimping block from the first end, the feature where the suture channel and the crimping opening are associated with "each" receptacle is confusing. Accordingly, the scope of the claims is indeterminate with regards to the embodiment where "one receptacle" extends into the crimping block from the first end. The objection similarly applies to the method claims because method

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claim 7 calls for “a receptacle” and then refers to a suture channel associated with “each” receptacle and a crimping opening in communication with “each receptacle”. (2) With reference to claim 9, the method is unclear. Numerous failures to provide antecedent basis in claim 9 for the claimed features renders this subject matter indefinite. This objection similarly applies to claim 10 and 11. The scope of these claims has been examined as best understood.

### **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Colligan (5,350,373). See Figure 4 where the crimping block, which comprises the mounted components of the tool, is provided with one receptacle 22 for supporting the needle, a suture channel 36 for supporting the suture 34 and a crimping opening (best seen in Figures 5 and 7 as a U-shaped opening for receiving the crimping arms 32) facilitating the crimping of the needle to the suture. A crimping arm 32 is provided with an end having a protrusion that moves into the crimping opening and crimps the needle to the suture. The withdrawal step of claim 7 is inherently performed by Colligan as the suture 34 would be pulled through the channel 36 to remove the needle from the tool.

Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by Shikakubo (5,943,765). See Figures 12A and 12B where the needle N is inserted into the receptacle into abutment with an end wall, defined by the ends of elements 95, 96 that engage the needle N (see Figure 12B).

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Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shikakubo (5,943,765) in view of Gooding (4,538,443). Shikakubo shows only one receptacle. It is common in the art to provide crimping tools with a plurality of crimping die surfaces so as to increase the usage of the tool. This is shown by Gooding at 113A-D, 123A-D. Accordingly, it would have been obvious to the skilled artisan at the time of the invention to have modified Shikakubo by using the concepts taught by Gooding so as to increase the crimping usage of the tool on different sized work pieces. The suture channel 95a, 96a is shown to be tapered.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 2-6 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

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## INQUIRIES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(703) 308-1870**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Allen Ostrager, can be reached at **(703) 308-3136**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is **(703) 872-9306**.

DCCrane  
September 2, 2004



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725